

The Honorable Benjamin H. Settle

JENNY A. DURKAN
United States Attorney
Western District of Washington
700 Stewart Street
Suite 5220
Seattle, Washington 98101-1271

NATHANIEL B. PARKER
Trial Attorney, Tax Division
U.S. Department of Justice
P.O. Box 683
Ben Franklin Station
Washington, D.C. 20044-0683
Telephone: (202) 307-6547

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT TACOMA

UNITED STATES OF AMERICA,)	
)	Civil No. 3:10-cv-05333-BHS
Plaintiff,)	
)	MOTION TO STRIKE
v.)	
)	NOTING DATE: October 22, 2010
PAUL W. HIATT; MARILEEN J. MCMAHON)	
)	
Defendants.)	

The United States, by and through undersigned counsel, hereby submits this motion to strike the Default, Notice of Special Appearance to Challenge Jurisdiction, Notice of Non-Acceptance of Offer (Docket #22), Demand for Credentials/Offer to Settle (Docket #25), and Notice of Final Judgment (Docket #26) filed by the Defendants in the above-captioned action. These frivolous filings are based upon the meritless contentions that Defendants may decline the Court's assertion of personal and subject matter jurisdiction over them and that the Defendants have the authority to enter a final judgment in this case based upon the Notice of Special

The Honorable Benjamin H. Settle

Appearance to Challenge Jurisdiction (Docket #18). In support of this motion, the United States avers as follows:

1. The United States filed the Complaint in this action on May 11, 2010 (Docket #1), and Defendants were properly served on June 11, 2010 (Docket ##15, 16).
2. The Defendants moved for an extension of time to file an answer on July 7, 2010 (Docket ## 13-14). The United States did not oppose the motion to extend, and the Court granted the motion, allowing Defendants until August 10, 2010 to file their answers.
3. On August 10, 2010, Defendants filed a Notice of Special Appearance to Challenge Jurisdiction and a Notice of Non-Acceptance of the Complaint (Docket ##18-19). These filings contained a number of frivolous arguments, asserting, *inter alia*, that this Court is incompetent to adjudicate the matters raised in the United States' Complaint and that the United States lacks standing to sue. Defendants also demanded that the United States and the Court provide identification and credentials and that the undersigned complete an "Attorney Questionnaire."
4. Construing the Notice of Special Appearance as a motion to dismiss under Fed. R. Civ. P. 12(b)(6), the United States filed a response on August 17, 2010. In that response, the United States noted that the precise arguments and demands for information that Defendants make in their Notice of Special Appearance and Notice of Non-Acceptance have been summarily rejected as frivolous and

The Honorable Benjamin H. Settle

“nonsensical.” See United States v. Eckwortzel, 2009 U.S. Dist. LEXIS 8045 (D. Id., 2009). The United States requested that the Court deny the relief requested in the notice and relieve the United States from any obligation of responding to Defendants’ frivolous and vexatious demands for information. In addition, the United States requested that the Court order Defendants to file an answer to the United States’ Complaint that conforms to Fed. R. Civ. P. 8(b) within fifteen days of the Court’s ruling on the Defendants’ Notice of Special Appearance. See Docket at #21.

5. The Court entered a Minute Order setting trial and pretrial dates on September 10, 2010 (Docket #27), but has not yet ruled on Defendants’ Notice of Special Appearance or Notice of Non-Acceptance. To date, Defendants have not yet filed an answer to the United States’ Complaint that conforms to Fed. R. Civ. P. 8(b), and have not issued their initial disclosures to the United States.

For the reasons herein, the United States respectfully requests that the Court strike Defendants’ Default Notice (Docket #22), Demand for Credentials/Offer to Settle (Docket #25), and Notice of Final Judgment (Docket #26) from the record, deny the relief requested in the Defendants’ Notice of Special Appearance and Notice of Non-Acceptance (Docket ## 18, 19), order the Defendants to file an answer conforming to Fed. R. Civ. P. 8(b) within fifteen days of

///

///

The Honorable Benjamin H. Settle

the Court's ruling, and to provide the United States with their initial disclosures within twenty-one days of the Court's ruling. The United States further requests an Order advising Defendants that their failure to comply with the Order of the Court may result in the imposition of sanctions, including the entry of judgment in favor of the United States.

Respectfully submitted this 28th day of September, 2010.

JENNY A. DURKAN
United States Attorney

/s/ Nathaniel B. Parker
NATHANIEL B. PARKER
Trial Attorney, Tax Division
U.S. Department of Justice
P.O. Box 683
Ben Franklin Station
Washington, D.C. 20044-0683
Telephone: (202) 307-6547

The Honorable Benjamin H. Settle

CERTIFICATE OF SERVICE

IT IS HEREBY CERTIFIED that service of the foregoing motion has been made by filing it with the Court via the ECF and manually upon the following by depositing a copy in the United States mail, postage prepaid on September 28, 2010:

Marileen J. McMahon
PO Box 122
Gig Harbor, WA 98335

Paul W. Hiatt
PO Box 122
Gig Harbor, WA 98335

/s/ Nathaniel B. Parker
NATHANIEL PARKER
Trial Attorney, Tax Division
U.S. Department of Justice
Post Office Box 683, Ben Franklin Station
Washington, D.C. 20044
Telephone: (202) 307-6547